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**FARDIS & BOUDOURIS v. E. I. DU PONT DE NEMOURS & CO.**

June 13, 1918.

[96 S. E. 164.]

1. **Trial (§ 59 (2)\*)—Evidence—Order of Proof.**—The order of proof not being material, the court in its discretion might permit evidence to be introduced on condition that defendant should thereafter be connected with it, and, when that condition failed, it might exclude the evidence.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 597.]

2. **Trial (§ 89\*)—Striking out Evidence.**—In an action for the destruction of plaintiff's building by explosives in an effort to check a fire, where there was nothing to show that the acts and conduct of defendant company's policemen were impliedly or expressly authorized by defendant, the striking out of evidence with reference to the destruction of the building was not error.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 347.]

3. **Appeal and Error (§ 692 (1)\*)—Assignments of Error—Sufficiency.**—An assignment of error to the refusal to permit a witness to answer the question is fatally defective, where the record failed to disclose what answer the witness would have made, or his knowledge on the subject.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 377, 378.]

Error to Corporation Court of Hopewell.

Action by Fardis & Boudouris against E. I. Du Pont de Nemours & Co. Verdict and judgment for defendant, and plaintiff brings error. Affirmed.

*Henley, Hall, Hall & Peachy*, of Williamsburg, for plaintiff in error.

*Plummer & Bohannon*, of Petersburg, for defendant in error.

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**HARRISON v. COMMONWEALTH.**

June 13, 1918.

[96 S. E. 165.]

1. **Taxation (§ 844\*)—Interest and Penalties—Remission.**—On a motion by an executor for relief against interest and penalties on omitted taxes assessed against the estate of his decedent, evidence held not to show that the executor made proper effort to comply with Code 1904, § 508, as amended by Act March 22, 1916 (Acts 1916, c. 491), providing that, when omitted intangible personal prop-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

erty, money, and incomes are voluntarily reported to the examiner of records on or before August 1, 1916, on forms prescribed by the auditor of public accounts, and a tax thereon paid before November 1st, the tax shall not be subject to interest or penalty.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 92.]

**2. Taxation (§ 838\*)—Omitted Taxes—Penalties and Interest.**—On taxing the property of an estate of a decedent, as for omitted taxes, penalties as well as interest may be imposed.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 92, 118.]

Error to Circuit Court, New Kent County.

Motion by C. L. Harrison, as executor of the estate of Julia W. Harrison, deceased, for relief against interest and penalties upon omitted taxes assessed against the estate. From a denial of plaintiff's motion, he brings error. Affirmed.

*O'Flaherty, Fulton & Byrd*, of Richmond, for plaintiff in error.

*O. L. Shewmake* and *J. Vaughan Gary*, both of Richmond, and the *Attorney General*, for the Commonwealth.

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KINCHELOE et al. v. TAYLOR et al.

June 13, 1918.

[96 S. E. 167.]

**1. Vendor and Purchaser (§ 79\*)—Conditional Contract.**—Where the owner of a farm agreed to sell, the agreement providing it was understood by both parties that there was pending a suit covering the question of the seller's right to possession of the land, that he should deliver immediate possession as soon as the suit was settled or dismissed, at which time the sale was to be closed, the concluding clause providing that if the seller did not deliver possession he should reimburse the buyer for sums paid on account of the purchase price, the contract was conditional, effective only if plaintiff in the pending suit against the seller was divested of possession and interest in the land.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 494.]

**2. Joint Adventures (§ 5\*)—Contracts — Equitable Remedy.**—Where a farm was purchased at the suggestion and through the efforts of the buyer's associate under parol agreement that title should be taken in the buyer's name, but that the farm should be sold, and the buyer's associate, in consideration of his services, receive half the proceeds of the sale in excess of \$8,500, the associate was within

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.